

ORDINANCE 122614

AN ORDINANCE relating to noise control, adding new Sections 25.08.068, 25.08.221, 25.08.501, 25.08.890, 25.08.900, 25.08.910, 25.08.915, 25.08.920, 25.08.930, 25.08.940, 25.08.950, 25.08.960, and 25.08.970 and directing the Executive to promulgate by rule noise standards consistent with sound level units of measurement prescribed by Council.

WHEREAS, Seattle has a vibrant and active nightlife culture that contributes to the economic and cultural vitality of the City; and

WHEREAS, urban centers and hub urban villages have become increasingly characterized by mixed use development with residential uses in close proximity to commercial and entertainment uses; and

WHEREAS, it is important to balance the needs of residents in urbanizing areas for quiet enjoyment of their homes with the needs of entertainment establishment owners who operate businesses that make urbanizing areas exciting and desirable places to live; and

WHEREAS, as written, public disturbance noise provisions of the Noise Ordinance are cumbersome and difficult to enforce; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Section 25.08.068 is added to the Seattle Municipal Code to read as follows:

25.08.068 Amplified Noise

“Amplified Noise” means noise that is increased by electronic means.

Section 2. A new Section 25.08.105 is added to the Seattle Municipal Code to read as follows:

25.08.221 Receiving Dwelling unit

“Receiving Dwelling unit” is a dwelling unit as defined in Section 23.84A.008 and within which sound originating from sources outside the dwelling unit is received.

Section 3. A new Section 25.08.501 is added to the Seattle Municipal Code to read as follows:

25.08.501 Nightlife disturbance

A. It is unlawful for any person in possession of real property, other than residential property, to allow to originate from that property between the hours of ten (10:00) p.m. and seven (7:00) a.m. amplified noise that is plainly audible to a person of normal hearing when measured inside a receiving dwelling unit.

B. It is an affirmative defense to any proceeding arising under this section that the receiving dwelling unit was unoccupied at the time of the violation.

C. The Administrator shall promulgate by rule a standard for amplified noise plainly audible to a person of normal hearing which can be measured using a sound level meter.

Section 4. A new Section 25.08.890 of the Seattle Municipal Code is adopted to read as follows:

25.08.890 Warning for Nightlife disturbance violations

If after investigation the Administrator determines that the provisions of Section 25.08.501 have been violated, the Administrator may issue a citation, but only if a written warning has been issued to the person by the City within the previous three hundred and sixty five (365) days. A warning shall be served upon the persons responsible for the condition or violation by personal service or by first class mail, addressed to the person's last known address.

If the address of the responsible person is unknown and cannot be found after a reasonable search, the warning may be served by posting a copy at a conspicuous place on the property where the violation occurred. If a warning is directed to a person responsible for the violation who is not the owner of the property where the violation is occurring, a copy of the warning may be sent to the owner of the property. The warning is effective on the earliest date of: the date of personal service, the date of posting, three days after mailing by the City, or the day the notice is actually received.



Section 5. A new Section 25.08.900 of the Seattle Municipal Code is adopted to read as follows:

25.08.900 Citation

A. Citation. The citation shall include the following information:

1. The name and address of the person to whom the citation is issued;
2. A reasonable description of the location of the property on which the violation occurred;
3. A separate statement of each requirement or provision of the Chapter violated;
4. The date of the violation;
5. A statement that the person cited must respond to the citation within fifteen (15) days after service;
6. A space for entry of the applicable penalty;
7. A statement that a response must be received at the Office of Hearing Examiner not later than five p.m. on the date the response is due;
8. The name, address and phone number of the Office of Hearing Examiner where the citation is to be filed;
9. A statement that the citation represents a determination that a violation has been committed by the person named in the citation and that the determination shall be final unless contested as provided in this chapter; and
10. A certified statement of the person issuing the citation, authorized by RCW 9A.72.085, setting forth facts supporting issuance of the citation.

B. Service. The citation may be served by personal service in the manner set forth in RCW 4.28.080 for service of a summons or sent by first class mail, addressed to the last known



1 address of such person(s). Service shall be complete at the time of personal service, or if mailed,
2 on the date of mailing. If a citation sent by first class mail is returned as undeliverable, service
3 may be made by posting the citation at a conspicuous place on the property on which the
4 violation occurred.

5
6 Section 6. A new section 25.08.910 of the Seattle Municipal Code is adopted to read as
7 follows:

8 **25.08.910 Response to citations.**

9 A. A person must respond to a citation in one (1) of the following ways:

10 1. Paying the amount of the monetary penalty specified in the citation, in which
11 case the record shall show a finding that the person cited committed the violation; or

12 2. Requesting in writing a mitigation hearing to explain the circumstances
13 surrounding the commission of the violation and providing a mailing address to which notice of
14 such hearing may be sent; or

15 3. Requesting a contested hearing in writing, specifying the reason why the cited
16 violation did not occur or why the person cited is not responsible for the violation, and providing
17 a mailing address to which notice of such hearing may be sent.
18

19
20 B. A response to a citation must be received by the Office of the Hearing Examiner no
21 later than fifteen (15) days after the date the citation is served. When the last day of the appeal
22 period so computed is a Saturday, Sunday, or federal or City holiday, the period shall run until
23 five p.m. on the next business day.

24
25 Section 7. A new section 25.08.915 of the Seattle Municipal Code, is adopted to read as
26 follows:

25.08.915 Voluntary mitigation and waiver of initial penalty for nightlife

disturbance violations

For violations of Section 25.08.501 only, the Administrator may waive the penalty for the first violation if, within fifteen (15) days of the date of the citation, the respondent admits liability for the violation and elects, in a manner prescribed by rule, to provide permanent improvements or modifications that are reasonably likely to prevent future violations, which may include, but not be limited to, installation of sound insulation, isolators, suspension mounting or other sound mitigating measures. To be eligible for waiver, these improvements must be installed and approved by the Administrator within ninety (90) days of the citation.

Section 8. A new section 25.08.920 of the Seattle Municipal Code, is adopted to read as follows:

25.08.920 Failure to respond.

If a person fails to respond to a citation within fifteen (15) days of service, an order shall be entered by the Hearing Examiner finding that the person cited committed the violation stated in the citation, and assessing the penalty specified in the citation.

Section 9. A new Section 25.08.930 of the Seattle Municipal Code is adopted to read as follows:

25.08.930 Mitigation hearings.

A. Date and Notice. If a person requests a mitigation hearing, the mitigation hearing shall be held within thirty (30) days after written response to the citation requesting such hearing is received by the Hearing Examiner. Notice of the time, place, and date of the hearing will be sent by first class mail to the address provided in the request for hearing not less than ten (10) days prior to the date of the hearing.



1 B. Procedure at Hearing. The Hearing Examiner shall hold an informal hearing, which
2 shall not be governed by the Rules of Evidence. The person cited may present witnesses, but
3 witnesses may not be compelled to attend. A representative of the Administrator may also be
4 present and may present additional information, but attendance by a representative of the
5 Administrator is not required.
6

7 C. Disposition. The Hearing Examiner shall determine whether the person's explanation
8 justifies reduction of the monetary penalty; however, the monetary penalty may not be reduced
9 unless the Administrator affirms or certifies that the violation has been corrected prior to the
10 mitigation hearing. Factors that may be considered in whether to reduce the penalty include
11 whether the violation was caused by the act or neglect of another; or whether correction of the
12 violation was commenced promptly prior to citation but that full compliance was prevented by a
13 condition or circumstance beyond the control of the person cited.
14

15 D. Entry of Order. After hearing the explanation of the person cited and any other
16 information presented at the hearing, the Hearing Examiner shall enter an order finding that the
17 person cited committed the violation and assessing a monetary penalty in an amount determined
18 pursuant to this section. The Hearing Examiner's decision is the final decision of the City on this
19 matter.
20

21 Section 10. A new section 25.08.940 of the Seattle Municipal Code, is adopted to read as
22 follows:
23

24 **25.08.940 Contested case hearing.**

25 A. Date and Notice. If a person requests a contested case hearing, the hearing shall be
26 held within sixty (60) days after the written response to the citation requesting such hearing is
27 received.
28

1 B. Hearing. Contested case hearings shall be conducted pursuant to the procedures for
2 hearing contested cases contained in Section 3.02.090 and the rules adopted by the Hearing
3 Examiner for hearing contested cases, except as modified by this section. The issues heard at the
4 hearing shall be limited to those raised in writing in the response to the citation and that are
5 within the jurisdiction of the Hearing Examiner. The Hearing Examiner may issue subpoenas for
6 the attendance of witnesses and the production of documents.
7

8 C. Sufficiency. No citation shall be deemed insufficient for failure to contain a detailed
9 statement of the facts constituting the specific violation which the person cited is alleged to have
10 committed or by reason of defects or imperfections, provided such lack of detail, or defects or
11 imperfections do not prejudice substantial rights of the person cited.
12

13 D. Amendment of Citation. A citation may be amended prior to the conclusion of the
14 hearing to conform to the evidence presented if substantial rights of the person cited are not
15 thereby prejudiced.

16 E. Evidence at Hearing. The certified statement or declaration authorized by RCW
17 9A.72.085 submitted by a representative of the Administrator shall be prima facie evidence that a
18 violation occurred and that the person cited is responsible. Any certifications or declarations
19 authorized under RCW 9A.72.085 shall be admissible without further evidentiary foundation.
20 The person cited may rebut the evidence and establish that the cited violation(s) did not occur or
21 that the person contesting the citation is not responsible for the violation.
22

23 F. Disposition. If the citation is sustained at the hearing, the Hearing Examiner shall enter
24 an order finding that the person cited committed the violation and shall impose the applicable
25 penalty. If the Hearing Examiner determines that the violation did not occur, the Hearing
26 Examiner shall enter an order dismissing the citation.
27
28

1 G. Appeal. The Hearing Examiner's decision is the final decision of the City. Any
2 judicial review must be commenced within twenty-one (21) days of issuance of the Hearing
3 Examiner's decision in accordance with RCW 36.70C.040.

4 Section 11. A new Section 25.08.950 of the Seattle Municipal Code, is adopted to read
5 as follows:

6 **25.08.950 Failure to appear for hearing.**

7
8 Failure to appear for a requested hearing will result in an order being entered finding that
9 the person cited committed the violation stated in the citation and assessing the penalty specified
10 in the citation. For good cause shown and upon terms the Hearing Examiner deems just, the
11 Hearing Examiner may set aside an order entered upon a failure to appear.

12 Section 12. A new Section 25.08.960 of the Seattle Municipal Code, is adopted to read
13 as follows:

14 **25.08.960 Citation Penalties**

15
16 A person found to have violated Section 25.08.501 is subject to a penalty according to the
17 following schedule.

18

Citation Penalty Schedule		
Section or Subsection Violated	First Violation	Second and Subsequent Violations
25.08.501	\$1000	\$2000

22

23 Section 13. A new Section 25.08.970 of the Seattle Municipal Code, is adopted read as
24 follows:

25 **25.08.970 Each day a separate violation.**

26
27
28

1 Each day a person violates or fails to comply with the provisions of this chapter for which
2 a citation may be issued may be considered a separate violation for which a citation may be
3 issued and for which penalties may be imposed.

4 Section 14. The enforcement provisions contained in Sections 25.08.900-25.08.970 of
5 this ordinance apply to all enforcement actions commenced on or after the effective date of this
6 ordinance, regardless of when the violation occurred. To this extent, this
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



ordinance applies retroactively, but in all other respects it applies prospectively.

Section 15. The provisions of this ordinance are declared to be separate and severable. The invalidity of any particular provision shall not affect the validity of any other provision.

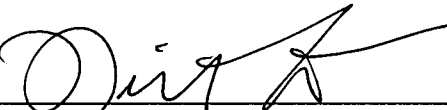
Section 16. The City Council directs that the Administrator promulgate rules to implement this ordinance. Such rules shall include definitions of or implementation procedures for determining “plainly audible to a person of normal hearing” and “when measured inside a receiving dwelling unit”. Such rules shall also, among other things, set threshold dB(A) levels and threshold dB(C) levels, measured as an increase in the sound level above the ambient noise level, for violations of Section 25.08.501. The rules may include different threshold levels for areas that are zoned to allow a variety of land uses in close proximity to residential uses. The rules may also include procedures for measuring sound levels to determine if a violation has occurred. These rules shall be developed in consultation with the Nightlife Advisory Board and shall be effective no later than June 1, 2008.

Section 17. The Executive shall report to the Economic Development and Neighborhoods Committee, or its successor committee, on completed enforcement actions brought under Seattle Municipal Code Section 25.08.501, frequency of nightlife disturbance noise complaints and the effectiveness of regulations created by this Ordinance and associated rulemaking in Section 16. This reporting shall occur annually by July 1st of each year for three (3) years beginning in 2009.


Section 18. Sections 1, 2, 3, 4, 7 and 12 of this ordinance shall take effect and be in force on whichever is the later of June 1, 2008 or the effective date of approval of the amendments in this ordinance by the Washington State Department of Ecology, which date is not later than ninety (90) days after submittal to the Department of Ecology. The remaining provisions of this

1 ordinance shall take effect and be in force on whichever is the later of: (a) the effective date of
2 approval of the amendments in this ordinance by the Washington State Department of Ecology,
3 which date is not later than ninety (90) days after submittal to the Department of Ecology; or (b)
4 thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the
5 Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code
6 Section 1.04.020.
7


8 Passed by the City Council the 17th day of December, 2007, and signed by me in open
9 session in authentication of its passage this 17th day of December, 2007.
10

11 
12 President _____ of the City Council

13 Approved by me this 21st day of December, 2007.

14 
15 Gregory J. Nickels, Mayor

16 Filed by me this 21st day of December, 2007.

17 
18 City Clerk
19

20 (Seal)
21
22
23
24
25
26
27
28

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Legislative	Ketil Freeman 4-8178	NA

Legislation Title:

AN ORDINANCE relating to noise control, adding new Sections 25.08.068, 25.08.221, 25.08.501, 25.08.890, 25.08.900, 25.08.910, 25.08.915, 25.08.920, 25.08.930, 25.08.940, 25.08.950, 25.08.960, and 25.08.970 and directing the Executive to promulgate by rule noise standards consistent with sound level units of measurement prescribed by Council.

• **Summary of the Legislation:**

This proposed Council Bill 1) establishes a new Noise Ordinance (Seattle Municipal Code Chapter 25.08) violation for amplified sound, "nightlife disturbance violation," 2) directs the Administrator of the Department of Planning and Development to promulgate a measurable standard for nightlife disturbance violations, 3) and establishes new expedited enforcement provisions.

• **Background:**

This legislation resulted from review and discussion by the Economic Development Committee (EDN) of a Mayoral proposal to develop a regulatory license for nightlife premises, C.B. 115830.

- *Please check one of the following:*

X **This legislation does not have any financial implications.** (Stop here and delete the remainder of this document prior to saving and printing.)

ORDINANCE _____

AN ORDINANCE relating to noise control, adding new Sections 25.08.068, 25.08.221, 25.08.501, 25.08.890, 25.08.900, 25.08.910, 25.08.915, 25.08.920, 25.08.930, 25.08.940, 25.08.950, 25.08.960, and 25.08.970 and directing the Executive to promulgate by rule noise standards consistent with sound level units of measurement prescribed by Council.

WHEREAS, Seattle has a vibrant and active nightlife culture that contributes to the economic and cultural vitality of the City; and

WHEREAS, urban centers and hub urban villages have become increasingly characterized by mixed use development with residential uses in close proximity to commercial and entertainment uses; and

WHEREAS, it is important to balance the needs of residents in urbanizing areas for quiet enjoyment of their homes with the needs of entertainment establishment owners who operate businesses that make urbanizing areas exciting and desirable places to live; and

WHEREAS, as written, public disturbance noise provisions of the Noise Ordinance are cumbersome and difficult to enforce; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Section 25.08.068 is added to the Seattle Municipal Code to read as follows:

25.08.068 Amplified Noise

“Amplified Noise” means noise that is increased by electronic means.

Section 2. A new Section 25.08.105 is added to the Seattle Municipal Code to read as follows:

25.08.221 Receiving Dwelling unit

“Receiving Dwelling unit” is a dwelling unit as defined in Section 23.84A.008 and within which sound originating from sources outside the dwelling unit is received.

Section 3. A new Section 25.08.501 is added to the Seattle Municipal Code to read as follows:

25.08.501 Nightlife disturbance

A. It is unlawful for any person in possession of real property, other than residential property, to allow to originate from that property between the hours of ten (10:00) p.m. and seven (7:00) a.m. amplified noise that is plainly audible to a person of normal hearing when measured inside a receiving dwelling unit.

B. It is an affirmative defense to any proceeding arising under this section that the receiving dwelling unit was unoccupied at the time of the violation.

C. The Administrator shall promulgate by rule a standard for amplified noise plainly audible to a person of normal hearing which can be measured using a sound level meter.

Section 4. A new Section 25.08.890 of the Seattle Municipal Code is adopted to read as follows:

25.08.890 Warning for Nightlife disturbance violations

If after investigation the Administrator determines that the provisions of Section 25.08.501 have been violated, the Administrator may issue a citation, but only if a written warning has been issued to the person by the City within the previous three hundred and sixty five (365) days. A warning shall be served upon the persons responsible for the condition or violation by personal service or by first class mail, addressed to the person's last known address. If the address of the responsible person is unknown and cannot be found after a reasonable search, the warning may be served by posting a copy at a conspicuous place on the property where the violation occurred. If a warning is directed to a person responsible for the violation who is not the owner of the property where the violation is occurring, a copy of the warning may be sent to the owner of the property. The warning is effective on the earliest date of: the date of personal service, the date of posting, three days after mailing by the City, or the day the notice is actually received.

Section 5. A new Section 25.08.900 of the Seattle Municipal Code is adopted to read as follows:

25.08.900 Citation

A. Citation. The citation shall include the following information:

1. The name and address of the person to whom the citation is issued;
2. A reasonable description of the location of the property on which the violation occurred;
3. A separate statement of each requirement or provision of the Chapter violated;
4. The date of the violation;
5. A statement that the person cited must respond to the citation within fifteen (15) days after service;
6. A space for entry of the applicable penalty;
7. A statement that a response must be received at the Office of Hearing Examiner not later than five p.m. on the date the response is due;
8. The name, address and phone number of the Office of Hearing Examiner where the citation is to be filed;
9. A statement that the citation represents a determination that a violation has been committed by the person named in the citation and that the determination shall be final unless contested as provided in this chapter; and
10. A certified statement of the person issuing the citation, authorized by RCW 9A.72.085, setting forth facts supporting issuance of the citation.

B. Service. The citation may be served by personal service in the manner set forth in RCW 4.28.080 for service of a summons or sent by first class mail, addressed to the last known

1 address of such person(s). Service shall be complete at the time of personal service, or if mailed,
2 on the date of mailing. If a citation sent by first class mail is returned as undeliverable, service
3 may be made by posting the citation at a conspicuous place on the property on which the
4 violation occurred.

5
6 Section 6. A new section 25.08.910 of the Seattle Municipal Code is adopted to read as
7 follows:

8 **25.08.910 Response to citations.**

9 A. A person must respond to a citation in one (1) of the following ways:

10 1. Paying the amount of the monetary penalty specified in the citation, in which
11 case the record shall show a finding that the person cited committed the violation; or

12 2. Requesting in writing a mitigation hearing to explain the circumstances
13 surrounding the commission of the violation and providing a mailing address to which notice of
14 such hearing may be sent; or

15 3. Requesting a contested hearing in writing, specifying the reason why the cited
16 violation did not occur or why the person cited is not responsible for the violation, and providing
17 a mailing address to which notice of such hearing may be sent.

18
19 B. A response to a citation must be received by the Office of the Hearing Examiner no
20 later than fifteen (15) days after the date the citation is served. When the last day of the appeal
21 period so computed is a Saturday, Sunday, or federal or City holiday, the period shall run until
22 five p.m. on the next business day.

23
24 Section 7. A new section 25.08.915 of the Seattle Municipal Code, is adopted to read as
25 follows:
26
27
28

25.08.915 Voluntary mitigation and waiver of initial penalty for nightlife

disturbance violations

For violations of Section 25.08.501 only, the Administrator may waive the penalty for the first violation if, within fifteen (15) days of the date of the citation, the respondent admits liability for the violation and elects, in a manner prescribed by rule, to provide permanent improvements or modifications that are reasonably likely to prevent future violations, which may include, but not be limited to, installation of sound insulation, isolators, suspension mounting or other sound mitigating measures. To be eligible for waiver, these improvements must be installed and approved by the Administrator within ninety (90) days of the citation.

Section 8. A new section 25.08.920 of the Seattle Municipal Code, is adopted to read as follows:

25.08.920 Failure to respond.

If a person fails to respond to a citation within fifteen (15) days of service, an order shall be entered by the Hearing Examiner finding that the person cited committed the violation stated in the citation, and assessing the penalty specified in the citation.

Section 9. A new Section 25.08.930 of the Seattle Municipal Code is adopted to read as follows:

25.08.930 Mitigation hearings.

A. Date and Notice. If a person requests a mitigation hearing, the mitigation hearing shall be held within thirty (30) days after written response to the citation requesting such hearing is received by the Hearing Examiner. Notice of the time, place, and date of the hearing will be sent by first class mail to the address provided in the request for hearing not less than ten (10) days prior to the date of the hearing.

1 B. Procedure at Hearing. The Hearing Examiner shall hold an informal hearing, which
2 shall not be governed by the Rules of Evidence. The person cited may present witnesses, but
3 witnesses may not be compelled to attend. A representative of the Administrator may also be
4 present and may present additional information, but attendance by a representative of the
5 Administrator is not required.
6

7 C. Disposition. The Hearing Examiner shall determine whether the person's explanation
8 justifies reduction of the monetary penalty; however, the monetary penalty may not be reduced
9 unless the Administrator affirms or certifies that the violation has been corrected prior to the
10 mitigation hearing. Factors that may be considered in whether to reduce the penalty include
11 whether the violation was caused by the act or neglect of another; or whether correction of the
12 violation was commenced promptly prior to citation but that full compliance was prevented by a
13 condition or circumstance beyond the control of the person cited.
14

15 D. Entry of Order. After hearing the explanation of the person cited and any other
16 information presented at the hearing, the Hearing Examiner shall enter an order finding that the
17 person cited committed the violation and assessing a monetary penalty in an amount determined
18 pursuant to this section. The Hearing Examiner's decision is the final decision of the City on this
19 matter.
20

21 Section 10. A new section 25.08.940 of the Seattle Municipal Code, is adopted to read as
22 follows:
23

24 **25.08.940 Contested case hearing.**

25 A. Date and Notice. If a person requests a contested case hearing, the hearing shall be
26 held within sixty (60) days after the written response to the citation requesting such hearing is
27 received.
28

1 B. Hearing. Contested case hearings shall be conducted pursuant to the procedures for
2 hearing contested cases contained in Section 3.02.090 and the rules adopted by the Hearing
3 Examiner for hearing contested cases, except as modified by this section. The issues heard at the
4 hearing shall be limited to those raised in writing in the response to the citation and that are
5 within the jurisdiction of the Hearing Examiner. The Hearing Examiner may issue subpoenas for
6 the attendance of witnesses and the production of documents.

8 C. Sufficiency. No citation shall be deemed insufficient for failure to contain a detailed
9 statement of the facts constituting the specific violation which the person cited is alleged to have
10 committed or by reason of defects or imperfections, provided such lack of detail, or defects or
11 imperfections do not prejudice substantial rights of the person cited.

12 D. Amendment of Citation. A citation may be amended prior to the conclusion of the
13 hearing to conform to the evidence presented if substantial rights of the person cited are not
14 thereby prejudiced.

16 E. Evidence at Hearing. The certified statement or declaration authorized by RCW
17 9A.72.085 submitted by a representative of the Administrator shall be prima facie evidence that a
18 violation occurred and that the person cited is responsible. Any certifications or declarations
19 authorized under RCW 9A.72.085 shall be admissible without further evidentiary foundation.
20 The person cited may rebut the evidence and establish that the cited violation(s) did not occur or
21 that the person contesting the citation is not responsible for the violation.

23 F. Disposition. If the citation is sustained at the hearing, the Hearing Examiner shall enter
24 an order finding that the person cited committed the violation and shall impose the applicable
25 penalty. If the Hearing Examiner determines that the violation did not occur, the Hearing
26 Examiner shall enter an order dismissing the citation.
27
28

1 G. Appeal. The Hearing Examiner's decision is the final decision of the City. Any
2 judicial review must be commenced within twenty-one (21) days of issuance of the Hearing
3 Examiner's decision in accordance with RCW 36.70C.040.

4 Section 11. A new Section 25.08.950 of the Seattle Municipal Code, is adopted to read
5 as follows:

6 **25.08.950 Failure to appear for hearing.**

7
8 Failure to appear for a requested hearing will result in an order being entered finding that
9 the person cited committed the violation stated in the citation and assessing the penalty specified
10 in the citation. For good cause shown and upon terms the Hearing Examiner deems just, the
11 Hearing Examiner may set aside an order entered upon a failure to appear.

12 Section 12. A new Section 25.08.960 of the Seattle Municipal Code, is adopted to read
13 as follows:

14 **25.08.960 Citation Penalties**

15
16 A person found to have violated Section 25.08.501 is subject to a penalty according to the
17 following schedule.

18

Citation Penalty Schedule		
Section or Subsection Violated	First Violation	Second and Subsequent Violations Violation
25.08.501	\$1000	\$2000

22

23 Section 13. A new Section 25.08.970 of the Seattle Municipal Code, is adopted read as
24 follows:

25 **25.08.970 Each day a separate violation.**

1 Each day a person violates or fails to comply with the provisions of this chapter for which
2 a citation may be issued may be considered a separate violation for which a citation may be
3 issued and for which penalties may be imposed.

4 Section 14. The enforcement provisions contained in Sections 25.08.900-25.08.970 of
5 this ordinance apply to all enforcement actions commenced on or after the effective date of this
6 ordinance, regardless of when the violation occurred. To this extent, this
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ordinance applies retroactively, but in all other respects it applies prospectively.

Section 15. The provisions of this ordinance are declared to be separate and severable.
The invalidity of any particular provision shall not affect the validity of any other provision.

Section 16. The City Council directs that the Administrator promulgate rules to implement this ordinance. Such rules shall include definitions of or implementation procedures for determining "plainly audible to a person of normal hearing" and "when measured inside a receiving dwelling unit". Such rules shall also, among other things, set threshold dB(A) levels and threshold dB(C) levels, measured as an increase in the sound level above the ambient noise level, for violations of Section 25.08.501. The rules may include different threshold levels for areas that are zoned to allow a variety of land uses in close proximity to residential uses. The rules may also include procedures for measuring sound levels to determine if a violation has occurred. These rules shall be developed in consultation with the Nightlife Advisory Board and shall be effective no later than June 1, 2008.

Section 17. Sections 1, 2, 3, 4, 7 and 12 of this ordinance shall take effect and be in force on whichever is the later of June 1, 2008 or the effective date of approval of the amendments in this ordinance by the Washington State Department of Ecology, which date is not later than ninety (90) days after submittal to the Department of Ecology. The remaining provisions of this ordinance shall take effect and be in force on whichever is the later of: (a) the effective date of approval of the amendments in this ordinance by the Washington State Department of Ecology, which date is not later than ninety (90) days after submittal to the Department of Ecology; or (b) thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.



1 Passed by the City Council the 17th day of December, 2007, and signed by me in open
2 session in authentication of its passage this 17th day of December, 2007.
3

4 _____
President _____ of the City Council

5 Approved by me this _____ day of _____, 2007.
6

7 _____
8 Gregory J. Nickels, Mayor

9 Filed by me this _____ day of _____, 2007.
10

11 _____
City Clerk

12 (Seal)
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATE OF WASHINGTON – KING COUNTY

--SS.

218865
CITY OF SEATTLE, CLERKS OFFICE

No.

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

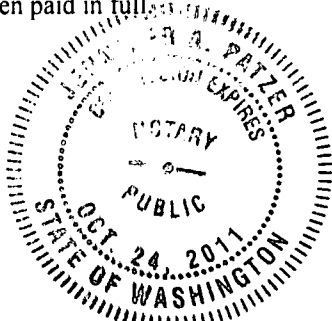
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:122614 ORDINANCE

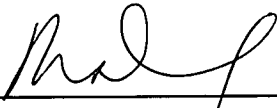
was published on

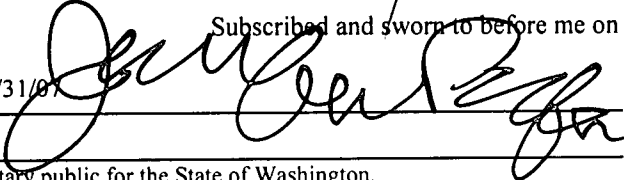
12/31/07

The amount of the fee charged for the foregoing publication is the sum of \$ 558.00, which amount has been paid in full.



Affidavit of Publication



Subscribed and sworn to before me on
12/31/07 

Notary public for the State of Washington,
residing in Seattle

City of Seattle

ORDINANCE 122614

AN ORDINANCE relating to noise control, adding new Sections 25.08.068, 25.08.221, 25.08.501, 25.08.890, 25.08.900, 25.08.910, 25.08.915, 25.08.920, 25.08.930, 25.08.940, 25.08.950, 25.08.960, and 25.08.970 and directing the Executive to promulgate by rule noise standards consistent with sound level units of measurement prescribed by Council.

WHEREAS, Seattle has a vibrant and active nightlife culture that contributes to the economic and cultural vitality of the City; and

WHEREAS, urban centers and hub urban villages have become increasingly characterized by mixed use development with residential uses in close proximity to commercial and entertainment uses; and

WHEREAS, it is important to balance the needs of residents in urbanizing areas for quiet enjoyment of their homes with the needs of entertainment establishment owners who operate businesses that make urbanizing areas exciting and desirable places to live; and

WHEREAS, as written, public disturbance noise provisions of the Noise Ordinance are cumbersome and difficult to enforce; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Section 25.08.068 is added to the Seattle Municipal Code to read as follows:

25.08.068 Amplified Noise

"Amplified Noise" means noise that is increased by electronic means.

Section 2. A new Section 25.08.105 is added to the Seattle Municipal Code to read as follows:

25.08.221 Receiving Dwelling unit

"Receiving Dwelling unit" is a dwelling unit as defined in Section 23.84A.008 and within which sound originating from sources outside the dwelling unit is received.

Section 3. A new Section 25.08.501 is added to the Seattle Municipal Code to read as follows:

25.08.501 Nightlife disturbance A. It is unlawful for any person in possession of real property, other than residential property, to allow to originate from that property between the hours of ten (10:00) p.m. and seven (7:00) a.m. amplified noise that is plainly audible to a person of normal hearing when measured inside a receiving dwelling unit.

B. It is an affirmative defense to any proceeding arising under this section that the receiving dwelling unit was unoccupied at the time of the violation.

C. The Administrator shall promulgate by rule a standard for amplified noise plainly audible to a person of normal hearing which can be measured using a sound level meter.

Section 4. A new Section 25.08.890 of the Seattle Municipal Code is adopted to read as follows:

25.08.890 Warning for Nightlife disturbance violations

If after investigation the Administrator determines that the provisions of Section 25.08.501 have been violated, the Administrator may issue a citation, but only if a written warning has been issued to the person by the City within the previous three hundred and sixty five (365) days. A warning shall be served upon the persons responsible for the condition or violation by personal service or by first class mail, addressed to the person's last known address. If the address of the responsible person is unknown and cannot be found after a reasonable search, the warning may be served by posting a copy at a conspicuous place on the property where the violation occurred. If a warning is directed to a person responsible for the violation who is not the owner of the property where the violation is occurring, a copy of the warning may be sent to the owner of the property. The warning is effective on the earliest date of the date of personal service, the date of posting, three days after mailing by the City, or the day the notice is actually received.

Section 5. A new Section 25.08.900 of the Seattle Municipal Code is adopted to read as follows:

25.08.900 Citation

A. Citation. The citation shall include the following information:

1. The name and address of the person to whom the citation is issued;
2. A reasonable description of the location of the property on which the violation occurred;
3. A separate statement of each requirement or provision of the Chapter violated;
4. The date of the violation;
5. A statement that the person cited must respond to the citation within fifteen (15) days after service;
6. A space for entry of the applicable penalty;
7. A statement that a response must be received at the Office of Hearing Examiner not later than five p.m. on the date the response is due;
8. The name, address and phone number of the Office of Hearing Examiner where the citation is to be filed;
9. A statement that the citation represents a determination that a violation has been committed by the person named in the citation and that the determination shall be final unless contested as provided in this chapter; and
10. A certified statement of the person issuing the citation, authorized by RCW 9A.72.085, setting forth facts supporting issuance of the citation.

B. Service. The citation may be served by personal service in the manner set forth in RCW 4.28.080 for service of a summons or sent by first class mail, addressed to the last known address of such person(s). Service shall be complete at the time of personal service, or if mailed, on the date of mailing. If a citation sent by first class mail is returned as undeliverable, service may be made by posting the citation at a conspicuous place on the property on which the violation occurred.

Section 6. A new section 25.08.910 of the Seattle Municipal Code is adopted to read as follows:

25.08.910 Response to citations.

A. A person must respond to a citation in one (1) of the following ways:

1. Paying the amount of the monetary penalty specified in the citation, in which case the record shall show a finding that the person cited committed the violation; or
2. Requesting in writing a mitigation hearing to explain the circumstances surrounding the commission of the violation and providing a mailing address to which notice of such hearing may be sent; or
3. Requesting a contested hearing in writing, specifying the reason why the cited violation did not occur or why the person cited is not responsible for the violation, and providing a mailing address to which notice of such hearing may be sent.

Section 7. A new section 25.08.915 of the Seattle Municipal Code, is adopted to read as follows:

25.08.915 Voluntary mitigation and waiver of initial penalty for nightlife disturbance violations

For violations of Section 25.08.501 only, the Administrator may waive the penalty for the first violation if, within fifteen (15) days of the date of the citation, the respondent admits liability for the violation and elects, in a manner prescribed by rule, to provide permanent improvements or modifications that are reasonably likely to prevent future violations, which may include, but not be limited to, installation of sound insulation, isolators, suspension mounting or other sound mitigating measures. To be eligible for waiver, these improvements must be installed and approved by the Administrator within ninety (90) days of the citation.

Section 8. A new section 25.08.920 of the Seattle Municipal Code, is adopted to read as follows:

25.08.920 Failure to respond.

If a person fails to respond to a citation within fifteen (15) days of service, an order shall be entered by the Hearing Examiner finding that the person cited committed the violation stated in the citation, and assessing the penalty specified in the citation.

Section 9. A new Section 25.08.930 of the Seattle Municipal Code is adopted to read as follows:

25.08.930 Mitigation hearings.

A. Date and Notice. If a person requests a mitigation hearing, the mitigation hearing shall be held within thirty (30) days after written response to the citation requesting such hearing is received by the Hearing Examiner. Notice of the time, place, and date of the hearing will be sent by first class mail to the address provided in the request for hearing not less than ten (10) days prior to the date of the hearing.

B. Procedure at Hearing. The Hearing Examiner shall hold an informal hearing, which shall not be governed by the Rules of Evidence. The person cited may present witnesses, but witnesses may not be compelled to attend. A representative of the Administrator may also be present and may present additional information, but attendance by a representative of the Administrator is not required.

Section 10. A new section 25.08.940 of the Seattle Municipal Code, is adopted to read as follows:

25.08.940 Contested case hearing.

A. Date and Notice. If a person requests a contested case hearing, the hearing shall be held within sixty (60) days after the written response to the citation requesting such hearing is received.

B. Hearing. Contested case hearings shall be conducted pursuant to the procedures for hearing contested cases contained in Section 3.02.090 and the rules adopted by the Hearing Examiner for hearing contested cases, except as modified by this section. The issues heard at the hearing shall be limited to those raised in writing in the response to the citation and that are within the jurisdiction of the Hearing Examiner. The Hearing Examiner may issue subpoenas for the attendance of witnesses and the production of documents.

C. Sufficiency. No citation shall be deemed insufficient for failure to contain a detailed statement of the facts constituting the specific violation which the person cited is alleged to have committed or by reason of defects or imperfections, provided such lack of detail, or defects or imperfections do not prejudice substantial rights of the person cited.

D. Amendment of Citation. A citation may be amended prior to the conclusion of the hearing to conform to the evidence presented if substantial rights of the person cited are not thereby prejudiced.

E. Evidence at Hearing. The certified statement or declaration authorized by RCW 9A.72.085 submitted by a representative of the Administrator shall be prima facie evidence that a violation occurred and that the person cited is responsible. Any certifications or declarations authorized under RCW 9A.72.085 shall be admissible without further evidentiary foundation. The person cited may rebut the evidence and establish that the cited violation(s) did not occur or that the person contesting the citation is not responsible for the violation.

F. Disposition. If the citation is sustained at the hearing, the Hearing Examiner shall enter an order finding that the person cited committed the violation and shall impose the applicable penalty. If the Hearing Examiner determines that the violation did not occur, the Hearing Examiner shall enter an order dismissing the citation.

G. Appeal. The Hearing Examiner's decision is the final decision of the City. Any judicial review must be commenced within twenty-one (21) days of issuance of the Hearing Examiner's decision in accordance with RCW 36.70C.040.

Section 11. A new Section 25.08.950 of the Seattle Municipal Code, is adopted to read as follows:

A. Date and Notice. If a person requests a mitigation hearing, the mitigation hearing shall be held within thirty (30) days after written response to the citation requesting such hearing is received by the Hearing Examiner. Notice of the time, place, and date of the hearing will be sent by first class mail to the address provided in the request for hearing not less than ten (10) days prior to the date of the hearing.

B. Procedure at Hearing. The Hearing Examiner shall hold an informal hearing, which shall not be governed by the Rules of Evidence. The person cited may present witnesses, but witnesses may not be compelled to attend. A representative of the Administrator may also be present and may present additional information, but attendance by a representative of the Administrator is not required.

Section 12. A new section 25.08.960 of the Seattle Municipal Code, is adopted to read as follows:

A. Date and Notice. If a person requests a contested case hearing, the hearing shall be held within sixty (60) days after the written response to the citation requesting such hearing is received.

B. Hearing. Contested case hearings shall be conducted pursuant to the procedures for hearing contested cases contained in Section 3.02.090 and the rules adopted by the Hearing Examiner for hearing contested cases, except as modified by this section. The issues heard at the hearing shall be limited to those raised in writing in the response to the citation and that are within the jurisdiction of the Hearing Examiner. The Hearing Examiner may issue subpoenas for the attendance of witnesses and the production of documents.

C. Sufficiency. No citation shall be deemed insufficient for failure to contain a detailed statement of the facts constituting the specific violation which the person cited is alleged to have committed or by reason of defects or imperfections, provided such lack of detail, or defects or imperfections do not prejudice substantial rights of the person cited.

D. Amendment of Citation. A citation may be amended prior to the conclusion of the hearing to conform to the evidence presented if substantial rights of the person cited are not thereby prejudiced.

E. Evidence at Hearing. The certified statement or declaration authorized by RCW 9A.72.085 submitted by a representative of the Administrator shall be prima facie evidence that a violation occurred and that the person cited is responsible. Any certifications or declarations authorized under RCW 9A.72.085 shall be admissible without further evidentiary foundation. The person cited may rebut the evidence and establish that the cited violation(s) did not occur or that the person contesting the citation is not responsible for the violation.

F. Disposition. If the citation is sustained at the hearing, the Hearing Examiner shall enter an order finding that the person cited committed the violation and shall impose the applicable penalty. If the Hearing Examiner determines that the violation did not occur, the Hearing Examiner shall enter an order dismissing the citation.

G. Appeal. The Hearing Examiner's decision is the final decision of the City. Any judicial review must be commenced within twenty-one (21) days of issuance of the Hearing Examiner's decision in accordance with RCW 36.70C.040.

25.08.950 Failure to appear for hearing.

Failure to appear for a requested hearing will result in an order being entered finding that the person cited committed the violation stated in the citation and assessing the penalty specified in the citation. For good cause shown and upon terms the Hearing Examiner deems just, the Hearing Examiner may set aside an order entered upon a failure to appear.

Section 12. A new Section 25.08.960 of the Seattle Municipal Code, is adopted to read as follows:

25.08.960 Citation Penalties

A person found to have violated Section 25.08.501 is subject to a penalty according to the following schedule.

Citation Penalty Schedule

Section or Subsection Violated -- First Violation -- Second and Subsequent Violations Violation

25.08.501 -- \$1000 -- \$2000

Section 13. A new Section 25.08.970 of the Seattle Municipal Code, is adopted read as follows:

25.08.970 Each day a separate violation.

Each day a person violates or fails to comply with the provisions of this chapter for which a citation may be issued may be considered a separate violation for which a citation may be issued and for which penalties may be imposed.

Section 14. The enforcement provisions contained in Sections 25.08.900-25.08.970 of this ordinance apply to all enforcement actions commenced on or after the effective date of this ordinance, regardless of when the violation occurred. To this extent, this ordinance applies retroactively, but in all other respects it applies prospectively.

Section 15. The provisions of this ordinance are declared to be separate and severable. The invalidity of any particular provision shall not affect the validity of any other provision.

Section 16. The City Council directs that the Administrator promulgate rules to implement this ordinance. Such rules shall include definitions of or implementation procedures for determining "plainly audible to a person of normal hearing" and "when measured inside a receiving dwelling unit". Such rules shall also, among other things, set threshold dB(A) levels and threshold dB(C) levels, measured as an increase in the sound level above the ambient noise level, for violations of Section 25.08.501. The rules may include different threshold levels for areas that are zoned to allow a variety of land uses in close proximity to residential uses. The rules may also include procedures for measuring sound levels to determine if a violation has occurred. These rules shall be developed in consultation with the Nightlife Advisory Board and shall be effective no later than June 1, 2008.

Section 17. Sections 1, 2, 3, 4, 7 and 12 of this ordinance shall take effect and be in force on whichever is the later of June 1, 2008 or the effective date of approval of the amendments in this ordinance by the Washington State Department of Ecology, which date is not later than ninety (90) days after submittal to the Department of Ecology. The remaining provisions of this ordinance shall take effect and be in force on whichever is the later of: (a) the effective date of approval of the amendments in this ordinance by the Washington State Department of Ecology, which date is not later than ninety (90) days after submittal to the Department of Ecology; or (b) thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 17th day of December, 2007, and signed by me in open session in authentication of its passage this 17th day of December, 2007.

Nick Licata

President of the City Council

Approved by me this 21st day of December, 2007.

Gregory J. Nickels, Mayor

Filed by me this 21st day of December, 2007.

(Seal) Judith Pippin

City Clerk

Publication ordered by JUDITH PIPPIN, City Clerk

Date of publication in the Seattle Daily Journal of Commerce, December 31, 2007.

12/31/218865